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**IN THE  
COURT OF APPEALS OF INDIANA**

MARVIN L. STARCHER,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A04-0703-PC-142

APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George W. Biddlecome, Judge  
Cause No. 20D03-0507-PC-18

**August 9, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Marvin L. Starcher brings this appeal from the denial of his petition for post-conviction relief challenging his conviction for Class A felony possession of methamphetamine with intent to deliver. We affirm.

## **Issue**

We consolidate and restate the issue as whether the post-conviction court properly concluded that Starcher received effective assistance of trial counsel.

## **Facts**

On November 19, 2003, Starcher was convicted of Count I, possession of methamphetamine in excess of three grams with intent to deliver, a Class A felony, and Count II, possession of a sawed off shotgun, a Class D felony. During trial, William Wargo, Chief Investigator for the Elkhart County Prosecutor's Office, testified that spiral notebooks or ledgers obtained from Starcher contained names associated with known methamphetamine dealers. Investigator Wargo also testified that the first names listed in the ledgers were consistent with the first names or nicknames of known drug dealers. Testimony given by Officer Michael Carich of the Elkhart County Sheriff's Department identified the ledgers as drug ledgers. Moreover, Lieutenant Barry Snyder of the Elkhart County Sheriff's Department testified that the particular facts indicated drug trafficking. Meanwhile, Starcher testified that he has been using methamphetamine for more than fourteen years. Starcher further testified that the ledgers were used to record money owed to him for work related purposes and to log money he was spending to purchase drugs for his personal use.

Starcher filed a direct appeal, and on March 14, 2005, this court affirmed the conviction and sentence. See Starcher v. State, No. 20A05-0402-CR-106 (Ind. Ct. App. March 14, 2005). On July 18, 2005, Starcher filed a pro se petition for post-conviction relief that was amended by counsel on May 15, 2006. On January 17, 2007, the post-conviction court denied Starcher's petition. Starcher now appeals.

### **Analysis**

The standard of review in appeals from post-conviction judgments is well established. A post-conviction petitioner appealing from a negative judgment must establish that the evidence is without conflict and, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision. Conner v. State, 711 N.E.2d 1238, 1244 (Ind. 1999). The reviewing court accepts the post-conviction court's findings of fact unless "clearly erroneous," but does not defer to conclusions of law. Id. at 1245. We examine only the probative evidence and reasonable inferences that support the post-conviction court's determination and do not reweigh the evidence or judge the credibility of the witnesses. Id.

Starcher challenges the effectiveness of his trial counsel. In order to prevail with an ineffective assistance of counsel claim, Starcher must show (1) that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment, and (2) that counsel's deficient performance prejudiced the defendant. Lloyd v. State, 669 N.E.2d 980, 984 (Ind. 1996). Significantly, isolated poor strategy, inexperience, or bad tactics do not necessarily amount to ineffective assistance of counsel. Id. A strong presumption exists that trial

counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions. Id. at 985. This presumption is overcome only by a showing of strong and convincing evidence. Id.

Starcher asserts that trial counsel was ineffective for failing to object to testimony from several officers that spiral notebooks found in Starcher's possession were drug ledgers. To prevail, Starcher has the burden of showing that "had a proper objection been made the trial court would have had no choice but to sustain it." Beard v. State, 428 N.E.2d 772, 774 (Ind. 1981). Moreover, a police officer who is offered and qualified as an expert in the area of drug trafficking may offer testimony regarding whether particular facts are consistent with dealing in drugs. Scisney v. State, 690 N.E.2d 342, 346 (Ind. Ct. App. 1997), aff'd in relevant part, 701 N.E.2d 847 (Ind. 1998).

The State established that Officer Carich was an expert in the area of drug trafficking. Here, the evidence revealed that Officer Carich has served as a patrol officer for nearly seven years and completed specialized training for law enforcement officers. Officer Carich also testified that he has completed three specific training sessions on drug interdictions and is certified in field testing for drugs. The evidence clearly establishes that Officer Carich was a trained police officer with specialized knowledge with regard to drug trafficking at the time of the instant offense.

Starcher claims that Officer's Carich's testimony included improper legal conclusions. Officer Carich testified that based on his experience and the totality of the evidence, he believed that the notebooks were drug ledgers consistent with drug dealing. Specifically, Officer Carich stated, "Based on my experience, that what I've noticed is

when people possess items like that, along with large amounts of cash, the methamphetamine packaged like it is in separate bundles, it—it's for sales." Tr. p. 117. Officer Carich did not state an improper legal conclusion. Rather, Officer Carich simply testified that the particular facts, including the contents of the ledgers, were consistent with dealing.

Lieutenant Snyder's testimony was also properly admitted. At the time of the offense, Lieutenant Snyder was a supervisor with the Drug Task Force Administration. Lieutenant Snyder also worked in conjunction with the DEA and other federal agencies in "large level upper level drug trafficker" areas. Tr. pp. 160-61. Like Officer Carich, Lieutenant Snyder has also completed training in drug enforcement and has completed specific training related to methamphetamine. Lieutenant Snyder, therefore, possessed specialized knowledge with regard to drug trafficking and was properly allowed to testify.

Starcher also claims that testimony given by Lieutenant Snyder included improper legal conclusions. Specifically, Starcher challenges testimony from Lieutenant Snyder stating that the ledgers contained money amounts owed for drugs. However, even Starcher acknowledges that a police officer may testify as to whether particular facts tend to be more or less consistent with dealing in drugs. Scisney, 690 N.E.2d at 346.

Lieutenant Snyder testified:

This would be a drug ledger because of . . . the way the meth was packaged. It's in smaller bags. The large amount of cash that was found, \$2,500. The way it was packed, the way it was bundled in increments . . . anytime you have scales, guns, and plastic baggies, that all that, along with this ledger, would

indicate drug trafficking, and it would show that these would be amounts owed for drugs.

Tr. pp. 167-68. Lieutenant Snyder did not state a conclusion as to whether Starcher was dealing in drugs. Rather, Lieutenant Snyder testified that based on his knowledge and experience, the particular facts indicated drug trafficking. The trial court, therefore, properly admitted this testimony into evidence.

Finally, Starcher challenges testimony given by Investigator Wargo. Specifically, Starcher claims that Investigator Wargo improperly speculated about the identity of the individuals listed in the ledgers. During trial, the court instructed the State that it may “question [Investigator] Wargo regarding the other people whose names appear in that book.” Tr. p. 226. Thereafter, Investigator Wargo testified that based on his experience, in his opinion, the first names or nicknames listed in the ledger reflected names of known drug dealers. Starcher has failed to meet his burden that the evidence would not have been admitted if trial counsel had made a proper objection.

With each challenged witness, the State has established the specialized training, knowledge, and experience of the officers. Moreover, each officer properly testified that, in his opinion, the ledgers were drug ledgers and consistent with drug dealing. Starcher, therefore, cannot show that had a proper objection been made, the trial court “would have had no choice but to sustain it.” Beard, 428 N.E.2d at 774. Starcher’s claim that he received ineffective assistance of trial counsel is without merit.

## **Conclusion**

Starcher has not established the elements of ineffective assistance of trial counsel.

We affirm the denial of post-conviction relief.

Affirmed.

KIRSCH, J., and ROBB, J., concur.